Civil Misc. Appeal No.144/04
Jamna Prasad Vs. Om Prakash & Others

Date of Order ::: *23* /08 /05

Hon'ble Mr. Justice Ajay Rastogi

Mr. Praveen Jain, for appellant (plaintiff),
Mr J.P.Goyal for respondents (defendants),

This misc. appeal has been preferred against order dt.08/10/03 whereby Additional District Judge no.1, Bundi has dismissed plaintiff appellant's application seeking temporary injunction under O.39, Rr. 1 & 2 CPC.

Appellant has filed suit for declaration & permanent injunction against respondents (defendants) on premises that he is adopted son of Late Shri Mohar Singh and, therefore, is entitled to become owner of property in dispute left behind by Mohar Singh. While seeking such declaration, appellant also sought permanent injunction against those including respondents not to interfere in his peaceful possession over property in dispute. Alongwith suit, appellant also filed an application seeking temporary injunction.

Respondents filed reply to application for temporary injunction and disputed the fact with respect to plaintiff being gone in adoption to Mohar Singh, and submitted that in all other documents filed in a revenue suit – few of which have been placed on record, appellant has shown himself as son of Shri Puran, as such very premise on which he has filed suit for declaration & permanent injunction of claiming himself

to be adopted son of Mohar Singh was without foundation and in the absence whereof, very relief claimed for seeking temporary injunction cannot be granted.

Court below after taking note of contentions advanced by both the parties, has arrived at a conclusion that from the material on record, appellant was not able to prima facie show that he has been in possession over property in dispute and once he failed to show any prima facie case in his favour, issues of irreparable loss or balance of convenience, were not required to be entertained, and consequently, application for temporary injunction filed by appellant was rejected vide order dt.08/10/03. Hence this misc. appeal.

Shri Praveen Jain, Counsel for appellant has urged that sufficient material was placed on record and statements were also recorded by family members of appellant, in such circumstances, very finding recorded by Court below in holding that appellant failed to establish prima facie case in his favour, is totally perverse and that apart, it has been urged that once dispute is pending with regard to suit property of Mohar Singh, over which he has been claiming his right on the basis of he being his adopted son, even otherwise during pendency of suit, parties are expected to maintain status quo, therefore, court below ought to have granted temporary injunction for maintaining status quo and in such circumstances, the impugned order has resulted in causing prejudice to him and his right which he claims over suit property.

Shri J.P.Goyal, Counsel for respondents, per contra, urged that after taking note of material on record produced by both the parties, Court below was not satisfied with all facts and so it held that appellant has not been able to establish prima facie case in his favour – in the absence of which mere filing of suit will not hold defendants from being deprived of their suit property which they are holding and if the suit remains pending, their right cannot be deprived for all times to come and once prima facie case could not have been established by appellant, no error was committed by court below in rejecting application for temporary injunction vide order dt.08/10/03.

It has also been informed to this Court that the suit is now at the stage of recording of statement of witnesses to be examined by plaintiff.

I have considered submissions made by both the parties and also perused impugned order passed by court below. Suit has been filed for seeking declaration & permanent injunction based on premises that appellant has gone in adoption to Mohar Singh and by virtue of being adopted son, he is entitled to own property in dispute left by Mohar Singh and temporary injunction is being sought against respondents (defendants) not to interfere in his peaceful possession over suit property but plaintiff has failed to prima facie establish before the court below that he is adopted son of Mohar Singh and that apart, he is in possession over suit property. Mere filing of suit for

seeking declaration and permanent injunction, without prima facie establishing fact of being adopted son of Mohar Singh, through which he has been claiming his right over suit property, in my opinion will not restrain defendants of their rights to hold suit property pendente lis. Court below has, therefore, committed no error in recording finding of fact and circumstances of the case that prima facie case could not have been established by plaintiff of he being adopted son of Mohar Singh and in the absence of making out a prima facie case in his favour, other pre-conditions for grant of temporary injunction in my opinion are not required to be looked into and as such no error has been committed by court below in rejecting application for temporary injunction.

In this view of the matter, I do not find any merit in this appeal, which is accordingly dismissed. No order as to costs. However, it is expected from learned court below to decide the pending suit expeditiously.

(Ajay Rastogi), J.

K.Khatri/